

SHARLA L. RITTER)	
Claimant)	
v.)	
)	Docket No. 1,054,842
DECATUR HEALTH SYSTEMS)	
Respondent)	
and)	
)	
KANSAS HOSPITAL ASSOCIATION WCF, INC.)	
Insurance Carrier)	

Respondent requests review of the June 4, 2015, Award by Special Administrative Law Judge (SALJ) C. Stanley Nelson. The Board heard oral argument on October 6, 2015.

Matthew L. Bretz, of Hutchinson, Kansas, appeared for claimant. Wade A. Dorothy, of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

The Board has considered the entire record and adopted the stipulations listed in the Award. On June 17, 2015, the parties settled the issue of permanent partial disability and all other issues, including review and modification, except past and future medical treatment remained open, subject to further order of the Director.

The SALJ found claimant sustained a compensable psychological injury directly traceable to her work related physical injury of November 17, 2010. The SALJ ordered respondent to provide ongoing psychological treatment and to pay the medical bills admitted into evidence as claimant's regular hearing exhibit one. Those bills included charges related to claimant's attempted suicide.

Respondent contends, based on Dr. Baade's testimony, claimant did not sustain a psychological disorder caused by her November 17, 2010, injury, and that respondent should, accordingly, not be responsible to pay expenses incurred to treat claimant's alleged

psychological disorder, including the expenses associated with claimant's suicide attempt. Respondent requests the Award be reversed.

Claimant contends respondent is responsible to pay the expenses for her psychological treatment, including the bills contained in claimant's regular hearing exhibit one. Claimant maintains the SALJ's decision should be affirmed.

The issues the Board must decide are:

1. Did claimant sustain a compensable psychological injury directly traceable to her work related physical injury on November 17, 2010?
2. Is respondent obligated to provide ongoing psychological treatment?
3. Is respondent obligated to pay for past psychological treatment, including treatment related to claimant's suicide attempt?

FINDINGS OF FACT

Claimant, who worked for respondent as a certified nurses aide (CNA), injured her low back on November 17, 2010, when she slipped and fell while showering a wheelchair-bound patient. There is no dispute this accident/back injury is compensable.

Claimant testified she was seen by a doctor "work comp wanted me to see."¹ According to claimant, the doctor told her she had nothing wrong and to go back to work.

On January 6, 2012, claimant sought treatment at High Plains Mental Health Center for pain and depression she claimed was related to her back injury. Claimant testified physical pain, relationship difficulties and her son graduating from high school were factors contributing to her going to High Plains. According to claimant, she was frequently in bed with back pain, causing her to miss her son's senior basketball games. Claimant testified her pain caused her to be unable to do what she wanted. Claimant asserted the pain made her difficult to live with, resulting in relationship problems. Claimant thought of moving to Denver to be closer to doctors and better jobs, but she did not know how she could relocate when she was unable to get out of bed.

Claimant asserted she had no mental health issues before her accident.

Claimant testified her pain was overwhelming, she thought she was never going to receive medical treatment, and did not want to lay in bed all the time. She thought her life was over and attempted suicide on February 12, 2012, when she consumed alcohol and

¹ R.H. Trans. at 20.

took pills. She was initially transported to Decatur Hospital emergency room. She was subsequently life-flighted to Good Samaritan in Kearney, Nebraska, and was then admitted to Richard H. Young Hospital.

Ultimately, in June 2013, claimant was treated surgically by a fusion and decompressive laminectomies, performed by Timothy Birney, M.D., who claimant consulted on her own. Claimant asserted that post-surgically, she experienced problems sitting and standing too much, pain in her back, right hip and pelvis, and pain down her right leg. Claimant said she had significant pain control problems and underwent radiofrequency ablation at three levels in her spine.

Claimant testified the SALJ ordered Lyle Baade, Ph.D, a clinical neuropsychologist, to perform an evaluation. Dr. Baade evaluated claimant on July 23, 2012, but he did not provide his report until November 26, 2013, nearly a year and a half later. Claimant claimed the delay caused her to be frustrated.

Dr. Baade testified claimant told him she had continuing back pain and no prior history of depression. She reported a suicide attempt in February 2012. Following her work injury, claimant received treatment for depression, both psychopharmacological and psychotherapy. Claimant reported her mood was depressed, accompanied by low back pain. She told the doctor her depression was secondary to her back pain and she was unable to work. Claimant's ability to focus and concentrate was intermittent and affected her pain and depression.

Dr. Baade testified claimant's MMPI-2 test showed slight elevation of the depression scales, but no elevation of the clinical scales for demoralization and general emotional upset. Claimant's MMPI-III personality test showed no clinically elevated scales. Dr. Baade testified that, although claimant reported depressed mood secondary to her pain, the testing provided no evidence of a psychiatric disorder. Dr. Baade found no psychiatric disorder secondary to her injury of November 2010.

Dr. Baade testified the treatment claimant received as a result of her suicide attempt was necessary and reasonable, given her condition, but he did not relate it to her back injury.

Although Dr. Baade did not diagnose depression, he was not critical of other doctors who diagnosed depression. However, when he saw claimant, she did not meet the criteria for depression. Dr. Baade testified claimant's statements about never getting any help, not wanting to lay in bed all the time and feeling her life was over were consistent with the reasons claimant gave for attempting suicide, including her interpersonal relationship problems.

Dr. Baade testified he had no reason to believe claimant's suicide attempt occurred for reasons other than the pain from her injury, as well as some interpersonal relationship

issues. According to Dr. Baade, claimant's pain from her work injury contributed to the reasons she attempted suicide. Dr. Baade testified claimant was frustrated trying to control her pain and get treatment for her pain, and it took some time for her to receive such treatment. Dr. Baade found some evidence of somatic complaints expected from chronic pain from her work-related injury.

George G. Flutter, M.D.² evaluated claimant on April 14, 2014, at the request of her attorney. Dr. Flutter reviewed records, took a history and performed a physical examination. Dr. Flutter diagnosed low back and right lower extremity pain; lumbar discopathy with probable lower extremity radiculitis; status post lumbar spine surgery by Dr. Birney in June 2013; depression, depressed mood, and adjustment disorder; probable sacroiliac joint dysfunction and probable trochanteric bursitis.

Dr. Flutter testified there was a causal relationship between claimant's condition, diagnoses and her November 2010 injury. Dr. Flutter testified structural changes due to her injury provided a physiologic basis for chronic pain. Dr. Flutter asserted claimant's chronic pain had an impact on her mood and psychological/psychiatric status, making it more likely than not the injury and the sequelae from the injury, including surgery and chronic pain, were the causes of her psychological injury.

Dr. Flutter testified claimant sustained a 24 percent permanent impairment of function related to her spine and pelvis and a 10 percent whole body impairment related to behavioral and emotional conditions, for a total whole body impairment of 32 percent.

Dr. Flutter's restrictions were: lifting, carrying, pushing, and pulling restricted to 20 pounds occasionally and 10 pounds frequently; bending, stooping, crouching and twisting restricted to an occasional basis; avoid prolonged sitting, standing and walking; change positions and alternate activities for comfort. From a list of 33 work tasks³ claimant performed in the fifteen years preceding the accidental injury, Dr. Flutter testified she cannot perform 25, for a 76 percent task loss.

At the request of claimant's counsel, Jarrod Steffan, Ph.D., a psychologist, evaluated claimant on October 17, 2014. Dr. Steffan interviewed claimant, reviewed medical records and administered a number of psychological tests. Dr. Steffan testified claimant's records revealed she began psychological treatment in January 2012 that continued until his examination in 2014. Claimant was consistently diagnosed with major depressive disorder throughout the three years of her treatment. The records also detailed

² Dr Flutter is not a psychiatrist or psychologist and the evidence does not establish the doctor is qualified to express expert opinions in those fields.

³ The list of work tasks was compiled by vocational consultant Robert W. Barnett, who testified by deposition.

claimant's suicide attempt, her treatment thereafter, and the details of claimant's symptoms, including severity, frequency, and how the symptoms changed over time.

Dr. Steffan testified that the records revealed claimant was diagnosed at High Plains Medical Center with major depressive disorder, recurrent and severe, without psychotic features. According to Dr. Steffan, the High Plains records indicated claimant attempted suicide by medication overdose because she learned there was no surgery to reduce her back pain. Through the years of treatment at High Plains, claimant's diagnosis of major depressive disorder did not change.

Dr. Steffan testified the Decatur Health Systems medical records documented claimant's emergency treatment on February 12, 2012, for an overdose or suicide attempt. Decatur emergency room records did not provide a diagnosis, but the ER physician prescribed medications for depression and emotional problems. Records from Good Samaritan Hospital and Richard H. Young Hospital pertained to claimant's hospitalization following her suicide attempt and indicated contributors to her attempt were both family issues and chronic back pain. Diagnoses were adjustment disorder with depressed mood, major depressive disorder, recurrent, and personality disorder.

According to Dr. Steffan, Dr. Baade's delay in preparing his report until November 2013 served to slow the claim process to a standstill, creating further distress and impairment of claimant's daily activities. According to Dr. Steffan, Dr. Baade's opinion is at variance with all the other sources who treated or evaluated claimant's mental health status.

Dr. Steffan testified claimant reported experiencing depression a couple months after her work injury, and she had a good recollection of the course of her depression and her functioning since her injury. Dr. Steffan diagnosed clinically significant depression that met the threshold for the diagnosis of a mental disorder.

Dr. Steffan testified claimant's psychiatric hospitalization in February 2012, and resulting treatment made her aware of the effect of her suicide attempt on her family, particularly her son, which motivated her to participate in her treatment. Claimant talked about how her depression had lessened and the High Plains records showed from April to July 2012, claimant reported less distress and a reduction in depression. Dr. Steffan testified Dr. Baade's test results likely reflected claimant's condition of reduced depression, that was not overwhelming at that point. According to Dr. Steffan, the High Plains records showed claimant's depression increased starting in August and fluctuated over time.

Dr. Steffan testified the Symptom Assessment he administered indicated claimant had avoidance behaviors, situational uneasiness, trouble thinking clearly, somatic or physical problems, but no active depression or anxiety symptoms during the week prior to testing.

Dr. Steffan testified claimant's diagnosis of major depressive disorder is causally related to her work injury because she did not have a preexisting condition; she developed depression shortly after the workplace injury in response to limitations and physical problems related to the injury; and her depression has continued to fluctuate since the workplace injury. According to the doctor, claimant's attempted suicide and need for treatment were a direct result of her work injury.

Dr. Steffan recommended claimant continue her bimonthly psychotherapy sessions and medication regimen, and if her symptoms increase, confer with the providers for more frequent therapy or a different treatment.

Dr. Steffan testified he used the *AMA Guides*,⁴ and classified claimant in Class III, moderate impairment, and estimated claimant's permanent psychiatric impairment at 30 percent to the whole body.

Dr. Steffan imposed restrictions to avoid moderate or high stress working environments, significant work pressures, a rapid pace of completing tasks and responsibility for making judgments that affect the welfare of others.

Claimant testified she continues to take medication and still has issues from her pain and inability to do what she used to do. She continues to see a therapist at High Plains Mental Health once every three to four weeks. She also continues treatment with Dr. Romereim, a psychiatrist at High Plains, every three months for medication management. Dr. Lindau at McCook Clinic was designated as claimant's authorized treating physician for pain. Claimant saw Dr. Lindau once per month, but is now down to every other month, as needed. According to claimant, she has a hard time sitting over 20 minutes and she has pain if she stands too long.

PRINCIPLES OF LAW AND ANALYSIS

In *Jackson*,⁵ the Court held that when a primary injury under the Workers Compensation Act is shown to have arisen out of and in the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

⁴ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *AMA Guides* unless otherwise noted.

⁵ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

The standard for whether a psychological injury, or traumatic neurosis, is compensable under the workers compensation act is that the psychological injury must be directly traceable to a compensable physical injury.⁶

The Board finds claimant proved she sustained a psychological injury directly traceable to her physical injury of November 17, 2010. Claimant's testimony, which is relevant on the nature and extent of her injury,⁷ supports that finding. The testimony of Dr. Steffan supports the conclusion claimant's psychological disorder is directly traceable to her physical injury. Claimant's physical injury caused chronic pain and she developed symptoms of depression within a couple months following her injury. There was a significant delay in the provision of treatment for her back injury. Claimant consulted High Plains Mental Health Center for depression. Claimant's chronic pain and depression caused other problems in her life, necessitating ongoing psychological and psychiatric treatment, as well as ongoing pain management. Further delay and stress were occasioned by the unreasonable time it took Dr. Baade to prepare his report of the court-ordered IME. Claimant's suicide attempt was directly caused by claimant's depression that was directly traceable to her physical injury. The psychological and psychiatric treatment claimant received after her November 17, 2010, accidental injury, including the treatment resulting from her suicide attempt, was reasonable and necessary. Claimant had no significant history of psychological issues.

Board review of a judge's order is de novo on the record.⁸ The definition of a de novo hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the judge.⁹ The Board, on de novo review, makes its own factual findings.¹⁰ "It is the function of the [Board] to decide which testimony is more accurate and/or credible, and to adjust the medical testimony along with the testimony of the claimant and any other testimony which may be relevant to the question of disability."¹¹ Despite the Board's de novo review, some deference may be given to the judge's credibility findings under some circumstances. In this claim, the SALJ heard claimant testify at the regular hearing and had the opportunity to observe claimant's appearance and demeanor.

⁶ *Gleason v. Samaritan Home*, 260 Kan. 970, 926 P.2d 1349 (1996).

⁷ *Graff v. Trans World Airlines*, 267 Kan. 854, 983 P.2d 258 (1999); *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 11 P.3d 1184, rev. denied 270 Kan. 898 (2001).

⁸ See *Helms v. Pendergast*, 21 Kan. App. 2d 303, 899 P.2d 501 (1995).

⁹ See *In re Appeal of Colorado Interstate Gas Co.*, 270 Kan. 303, 14 P.3d 1099 (2000).

¹⁰ See *Berberich v. U.S.D. 609 S.E. Ks. Reg'l Educ. Ctr.*, No. 97,463, 2007 WL 3341766 (Kansas Court of Appeals unpublished opinion filed Nov. 9, 2007).

¹¹ See *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).

Appellate courts are ill suited to assessing credibility determinations based in part on a witness' appearance and demeanor in front of the factfinder. Although the Board conducts de novo review, the Board nonetheless often opts to provide some deference—although not statutorily mandated—to a judge's findings and conclusions concerning credibility where the judge was able to observe the testimony in person.¹² Although not expressly stated in the Award, it is apparent the SALJ found claimant's testimony credible and persuasive.

The Board finds the testimony of Dr. Steffan more credible than that of Dr. Baade. Dr. Steffan summarized in detail the medical records he reviewed and their contents. Dr. Steffan's report is more detailed and comprehensive than the report of Dr. Baade, which took him well over a year to prepare. Moreover, Dr. Baade's testimony that claimant has no psychological disorder is less than credible given the following:

1. Dr. Baade testified the treatment claimant received as a result of her suicide attempt was necessary and reasonable, given her condition. It is difficult to believe claimant had no psychological disorder when she attempted to end her life. It is also hard to place significant credence in Dr. Baade's opinion that claimant's psychological condition is unrelated to her physical injury when the undisputed evidence establishes claimant was having no psychological issues and was receiving no mental health treatment until she sustained the accidental injury and the consequences thereof.

2. Although Dr. Baade did not diagnose depression, he declined to be critical of the several other providers, including Dr. Steffan, who did diagnose depression. Dr. Baade testified claimant's statements about never getting any help, not wanting to lay in bed all the time and feeling her life was over were consistent with the reasons she gave for attempting suicide.

3. Dr. Baade testified he had no reason to believe claimant's suicide attempt occurred for reasons other than the pain from her injury, as well as some interpersonal relationship issues. According to Dr. Baade, claimant's pain from her work injury contributed to the reasons she attempted suicide. Dr. Baade testified claimant was frustrated trying to control her pain and secure medical treatment for the pain, and it took some time for her to receive such treatment. Dr. Baade found some evidence of somatic complaints expected from chronic pain from her work-related injury.

Dr. Steffan opined claimant's depression was directly related to her work injury. He also testified claimant continues to require treatment, both psychological and psychiatric. Claimant's testimony also supports her need for ongoing psychological and psychiatric treatment, as well as pain management for her physical injury.

¹² *De La Luz Guzman-Lepe v. National Beef Packing Company*, No. 103,869, 2011 WL 1878130 (Kansas Court of Appeals unpublished opinion filed May 6, 2011).

Dr. Steffan testified claimant's diagnosis of major depressive disorder was related to her work injury because she did not have a preexisting psychological condition; she developed depression shortly after the workplace injury in response to limitations and physical health problems related to the injury; and her depression had continued fluctuating since the workplace injury.

Respondent relies on *Carr*¹³ to support the notion it should not be liable to pay for expenses associated with claimant's post-injury psychological problems, including treatment she received following her attempted suicide. *Carr* is distinguishable from this claim and does not support respondent's position. Mr. Carr experienced continuing pain following his work injury and took an overdose of pain pills, resulting in "a rather costly hospital bill."¹⁴ The Court quoted claimant's testimony:

"I was in pain and I took two or three of them (the pain pills), and it didn't seem to help, so I took four or five more, I guess. I don't know. I had to go to the hospital, to the Lubbock General, and they've got a bill for \$2,142.25 with the ambulance."¹⁵

The Supreme Court held Mr. Carr's hospitalization and medical treatment incurred as a result of his overdose of pain pills following a work injury covered under the Act, did not constitute treatment which is an ordinary and necessary result of Mr. Carr's accident. The Court based its decision on the lack of substantial competent evidence supporting the lower court's decision in favor of Mr. Carr on this issue.

In Mr. Carr's claim, there was no evidence he sustained a psychological injury directly traceable to his physical injury. There was no evidence Mr. Carr was attempting to kill himself by intentionally taking too much pain medication. There was no evidence Mr. Carr was diagnosed with depression or any other emotional disorder as a direct and natural consequence of his injury.

The Board's rules the SALJ's findings regarding past and future psychological and psychiatric treatment, and for treatment of claimant's physical injury, are amply supported by a preponderance of the credible evidence, and are affirmed.

CONCLUSIONS

1. Claimant sustained a compensable psychological injury directly traceable to her work related physical injury of November 17, 2010.

¹³ *Carr v. Unit No. 8169/Midwestern Distribution*, 237 Kan. 660, 703 P.2d 751 (1985).

¹⁴ *Id.* at 662.

¹⁵ *Id.*

2. Respondent is obligated to provide ongoing psychological and psychiatric treatment.

3. Respondent is obligated to pay for past psychological treatment, including treatment related to claimant's suicide attempt.

The Board finds the Award of the SALJ is affirmed in all respects.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Special Administrative Law Judge C. Stanley Nelson dated June 4, 2015, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of December, 2015.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Matthew L. Bretz, Attorney for Claimant
matt@byinjurylaw.com
colleen@byinjurylaw.com

Wade A. Dorothy, Attorney for Respondent and its Insurance Carrier
wade@thedorothyfirm.com

Honorable C. Stanley Nelson, Administrative Law Judge